

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v -

07 Cr. 1119 (CM)

RICHARD GRANT,

Defendant.

**DECISION AND ORDER GRANTING DEFENDANT A HEARING ON HIS
MOTION TO SUPPRESS EVIDENCE AND STATEMENTS**

McMahon, J.:

Defendant is charged in a superseding indictment with “possession of a firearm when subject to a court order” and “distribution of a controlled substance.” (Indictment).

Defendant has filed a motion asking the Court “to suppress all the physical evidence seized from him and his home and suppressing all post-arrest statements made by and attributed to him, all on the ground that the warrantless and nonconsensual search of his home was in violation of his constitutional rights and fruits of that search led to his post arrest statements.” (Def. Mot. at 1). Defendant has submitted an affirmation in support of his motion in which he states *inter alia* that:

[the police] barged in without asking my permission to do so. . . . I was ordered to sit down in the living room and the police began searching my apartment without a search warrant and without asking my permission to go anywhere inside my apartment. The police retrieved physical items from my bedroom closet and a drawer in the kitchen. I was then arrested and taken to a police precinct after my sister came to take my son to her house. At the precinct the police instructed me to sign a consent paper to search my apartment, telling me that if I did not do so, they would request of the Child Protective Service to take custody of my now three-year-old son who was then living with me and still does and that it might take a year or so to get my son back. Under these circumstances, I signed the consent to search form, authorizing a search which had already taken place earlier, before I was even asked to sign such paper.

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(Def. Declaration at ¶¶ 2-3).

The Government opposes the motion arguing that defendant consented to the search of his home and that defendant's statements were made after he was read and expressly waived his Miranda rights. The Government nonetheless consents to a hearing, acknowledging that defendant's affirmation raises factual issues regarding the lawfulness of the search and the admissibility of defendant's statements. (Gov't. Letter dated 4/25/08).

Defendant's affirmation does indeed raise factual issues necessitating a suppression hearing. The hearing will be held tomorrow, April 30, 2008, at 9:30a.m.

This constitutes the decision and order of the Court.

April 29, 2008



Colleen McMahon
U.S.D.J.

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